88-708

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

NO. _____

EILEEN CONWAY,

Petitioner,

vs.

FIRST TRUST COMPANY,

Respondent

APPENDIX TO THE

PETITION FOR A WRIT OF CERTIORARI

Eileen Conway
Attorney Pro Se
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Germantown, Tennessee 38138
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INDEX OF APPENDIX

A. Record Appendix Page

1. Docket File has been sealed by Nelson County Judge and Nelson County Clerk of Court (see Petition for Rehearing, No. 870111.)
2. Letter from Nelson County Clerk of Court refusing to submit Docket File to North Dakota Supreme Court 96
3. Second letter from Nelson County Clerk of Court refusing to submit Docket File to North Dakota Supreme Court 98
4. Petition to Inspect Probate File, Including Docket File 100
5. Findings of Fact, Conclusions of Law and Order of Nelson County Probate Court (9-21-84) No Number 1
6. Opinion of the North Dakota Supreme Court (10-1-85) No. 10,867 9



		Page
7.	Judgment of the North Dakota Supreme Court (10-1-84) No. 10,867	52
8.	Amended Findings of Fact, Conclusions of Law and Order Upon Remand (12-5-85) No Number	54
9.	Opinion of North Dakota Supreme Court (10-28-86) No. 11,174	64
10.	Judgment of North Dakota Supreme Court (10-28-86) No. 11,174	73
11.	Findings and Order Approving Fees Nelson County Probate Court (2-27-87) No. 3168)	75
12.	Opinion of North Dakota Supreme Court (5-16-88) No. 870111	80
13.	Amended Opinion North Dakota Supreme Court (6-28-1988) No. 870111	91
14.	Petition for Rehearing Denied	94
15.	Letter from Office of Tax Commissioner confirming estate is probated under Probate Statutes of North Century Code	121

Page

B. Constitutional Provisions, Statutes, Rules, and Regulations Appendix 105

1. Amendment 14. 105

2. Amendment 8. 105

3. North Dakota Constitution, Article XI, Section 5 and Section 6 105

4. Uniform Probate Code Chapter 30.1-35-01 (8-101) 107

5. NDCC 30-20-15 108

6. NDCC 30-20-13 108

7. NDCC 30-15-01 109

8. NDCC 30-15-02 109

9. NDCC 30-15-3 112

10. NDCC 30-15-09 112

11. NDCC 30-20-01 113

12. NDCC 30-20-05 114

13. NDCC 30-20-07 115

14. NDCC 30-20-09 115

15. NDCC 30-14-14 116

RULES

	Page
16. N.D. Rules of Appellate Procedure, Rule 30	117
17. N.D. Rules of Appellate Procedure, Rule 38	117
18. N.D. Rules of Civil Procedure, Rule 5	118
19. N.D. Rules of Civil Procedure, Rule 53(b)	120
20. N.D. Rules of Disciplinary Procedure, Rule 22	119
21. ABA Standards for Lawyer Discipline and Disability Proceedings Section 8.2	119
22. Letter from Office of North Dakota Tax Commission confirming that estate is probated under the Probate Statutes of the North Dakota Century Code	107

IN THE COUNTY COURT OF NELSON COUNTY

STATE OF NORTH DAKOTA

In the Matter of the Estate of)
)
Selma Kjorvestad, Deceased.)

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND ORDER

The Petitioner, First Trust Company of North Dakota, filed a Final Accounting and Petition for Settlement and Distribution of the Estate which came on for hearing at the Nelson County Courthouse, Lakota, North Dakota, on September 21, 1984. The Petitioner appeared by Pam Anderson, its Probate Officer, and by J. Philip Johnson, its attorney. Lorraine Parker and Eileen Conway, heirs of the estate, appeared personally. Mrs. Conway filed and voiced various objections to the Petition and general status of the estate. Mrs. Parker made no objection.

Upon the testimony and exhibits presented and upon the records and files of

of this estate, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. This estate has been subject to a host of legal proceedings, hearings and appeals which have substantially delayed and extended this closing and which were, with few exceptions initiated by Mrs. Conway through a long succession of attorneys.

2. Selma Kjorvestad died testate on May 15, 1974. Petitioner is the duly appointed, qualified and acting Successor Personal Representative of the decedent's estate.

3. The previous Personal Representative of the estate, Eileen Conway and Lorraine Parker, were removed by Order of the District Court on June 19, 1980. The Petitioner was appointed Successor Personal Representative on September 4, 1980.

4. Purusant to Stipulation and Order of the Court, an interim distribution of

real estate and other assets constituting the bulk of the estate made to the heirs, Eileen Conway and Lorraine Parker, on or about February 21, 1979.

5. On December 6, 1982, the Court approved a Reconstructed Report and Account for the estate for the period January 23, 1978, to September 4, 1980.

6. An Inventory and Appraisement of all property of the estate known to the Successor Personal Representative has been filed and audits conducted by the Internal Revenue Service verifying the nature, extent and valuation of assets of the estate. Under previous Order of the Court Eileen Conway and Lorraine Parker were directed to deliver all assets of the estate in their possession and assist with marshalling any remaining assets.

7. Notice to Creditors of the decedent has been published as required by law and the time for presenting claims that arose

prior to the death of the decedent has expired.

8. All debts of the decedent and of the estate, and all expenses of administration thus far incurred, except those approved by separate Order upon hearing this date, and all taxes that have attached to or accrued against the estate have been paid.

9. The Petitioner filed a Final Account detailing receipts and disbursements in the administration of the estate from SEptember 4, 1980, totaling receipts of $249,172.24 and disbursements of $2.5,020.90 and the estate is in condition to be provisionally closed.

10. Allegations of misconduct on the part of attorneys, court officials, the Successor Personal Representative, and Lorraine Parker as made by Eileen Conway in documents filed with the Court are totally unsubstantiated by credible evidence. The administration of the Success-

or Personal Representative has proceeded in a competent and professional manner delayed only by the objections and proceedings initiated by Eileen Conway.

11. The decedent's will was previously admitted to probate in formal proceedings following notices required by law.

12. The decedent's will directs that the property remaining after payment of debts, claims, taxes, costs and expenses be distributed in equal shares to the surviving daughters of the decedent, Eileen Conway and Lorraine Parker.

13. The Stipulation and Interim Distribution of the parties on or about February 21, 1979, contemplated certain agtreed adjustments inthe respective distributions between the heirs.

14. The assets remaining in the estate consist of the following:

a. Miscellaneous jewelry of no substantial value.

b. Record title to the West 12 feet of Lot 3 and all of Lots 4, and 5, Block 32, White's First Addition to the City of Aneta, North Dakota;

c. Money market account in the amount of $34,151.34 as of April 30, 1984.

15. In view of the extended litigation history of this estate a reasonable reserve for additional litigation expense is appropriate.

CONCLUSIONS OF LAW

1. The Final Report and Account of the successor Personal REpresentative is approved and allowed.

2. A litigation reserve in the amount of $5,000.00 shall be retained by the Personal Representative for a period of one year from the date of entry of this Order and such account shall be applied toward any additional expenses of the Personal Representative and its attorneys arising from claims or litigation subsequent to such date. The balance shall be distrib-

in equal shares to Eileen Conway and Lorraine Parker upon expiration of that period.

3. The Personal Representative shall distribute to Eileen Conway record title West 12 feet of Lot 3 and all of Lots 4 and 5, Block 32, White's First Addition to the City of Aneta, North Dakota, together with one-half of the miscellaneous jewelry, as selected in the discretion of the Personal Representative, and one-half of the outstanding balance of the account.

4. The Personal Representative shall distribute to Lorraine Parker one-half of the miscellaneous jewelry, as selected in the discretion of the Personal Representative, and one-half of the outstanding balance of the account.

5. Distribution shall be deferred until expiration of the time for appeal or upon receipt of Writ and Waiver of Appeal by all interested parties.

6. The successor Personal Represent-

ative shall be finally discharged upon appropriate filing one year from the date of entry of this Order.

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the account, as described, be allowed and that distribution upon the terms and conditions set forth in the Conclusions of Law be approved and made.

Dated this 2nd day of October, 1984

Ronald M, Dosch

County Judge

Findings of Fact, Conclusions of Law and Order, prepared by:

Law Offices of Pancratz, Yuill, Wold, Johnson & Feder, P.C. Professional Corporation, 414 Gate City Building, P. O. Box 1680, Fargo, North Dakota 58107, Telephone (701) 235-5515.

Filed by Clerk Oct-1 1985
Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

In the Matter of the Estate of

Guy Kjorvestad, Sr. Deceased, and

In the Matter of the Estate of

Selma Kjorvestad, Deceased.

First Trust Company of

North Dakota

Petitioner and Appellee

v.

Eileen Conway

Respondent and Appellant

Civil Nos. 10,866-10867

Appeal from the County Court of Nelson County, Ronald M. Dosch, Judge.

AFFIRMED.

Opinion of the Court by Meschke, Justice.

Pancratz, Yuill, Wold, Johnson & Feder, Fargo, ND for petitioner and App-



ellee; argued by J. Philip Johnson.

Eileen Conway, 2922 S. Germantown Road, Germantown, TN 38138, respondent and appellant. appeared pro se.

Civil Nos. 10,866-67

First Trust Company v. Conway

MESCHKE, Justice.

This is the fifth chapter of a bitter dispute between two sisters about the substantial estates of their parents. Since we affirm orders approving the final account and distribution, this obessive ordeal ought to end.

Guy Kjorvestad died in 1973. His widow, Selma Kjorvestad, died in 1974. Their surviving daughters, Eileen Conway and Lorraine Parker, were the ultimate equal devisees of both estates and became co-representatives of them.

There followed years of "direct conflict between the two personal representatives." "failure of the represent-

atives to agree," "disputing," "Conway's intransigence [which]...continuously frustrated amicable settlement of those estates," and "unfounded rievance charges" against an attorney, as described in opinions in the first two unsuccessful appeal by Conway. Conway v. Parker, 250 N.W. 2d 266 (N.D. 1977)["Kjorvestad"] and Matt-of Estate of Kjorvestad, 287 N.W. 2d 465 (N.D. 1980)["Kjorvestad II"].

The sisters then each petitioned for removal of the other. The county court removed both and appointed First Trust Company of Fargo as the successor personal representative. Conway's appeal of these removal orders was dismissed as "substantially without merit." Matter of Estate of Kjorvestad. 304 N.W. 2d 83 (N.D. 1981) ["Kjorvestad III"] We observed that "the numerous times the court was called upon to resolve issues

resulting from the contentious attitude. if not quarrelsome behavior, existing between the corepresentatives certainly justified their removal. 304 N.W. 2d at 86. We pointed out that further litigation "would not serve to extend the time in which the estates are finally settled and would dissipate the funds of the estates to the detriment and prejudice of the estates." 304 N.W. 2d at 87.

Conway's contentiousness continued. In her fourth unsuccessful appeal, she challenged payment of fees to two attorneys and an accounting firm for services to the estates while the sisters were co-representatives.

First Trust Company of North Dakota v. Conway, 345 N.W. 2d 838 (N.D. 1984) [Kjorvestad IV"]

This is "Kjorvestad V."

Conway here appeals orders approv-

ing the final accounting of First Trust and ordering final distribution of the combined estates to Conway and Parker equally except for several undisputed and minor adjustments. She claims the county court erred:

(1) In excluding evidence at the hearing on the final account about the several years prior to First Trust becoming personal representative of the estates ("Reconstructed Account");

(2) In approving the final account of First Trust when it had not collected and accounted for all the assets of the estates;

(3) In approving the final account in her mother's estate without a full inventory, appraisal or notice to crediors; and

(4) In approving compensation and ex- expenses for First Trust and its attorney for services winding up the est-

ates.

Conway did not testify and called no witnesses. Her hearing evidence consisted only of her cross-examination of an officer of First Trust and 15 exhibits. These exhibits were summaries of items she claimed to be missing from safe deposit boxes, with copies of documents showing inventory of and access of boxes by herself and her sister between 1973 and 1978 (Exhibits A through I); a copy of an amendment to a judgment dated July 14, 1980 (Exhibit J); a copy of a prior order about funds of the estate in Ramsey County Nat;onal Bank and related correspondence of May 9, 1980 (Exhibits K and L); two pages from a transcript of a December 8, 1983, hearing in the estates (Exhibit M) an April 2, 1973, letter on the value of vehicles in the estate (Exhibit N); and a list of eight figures, without references,

totaling #38,836.67 and labeling "Missing Money" (Exhibit O).

Without any references to the record, Conway's "statement of facts" rails against her sister ("manic crime spree;" "embezzled money;" "embezzled bonds, cash, bank money-orders, checks;" "forged" signatures; "illegally redeemed securities and illegally moved $100,668.68 in cash assets;" "looted four safe deposit boxes [six];" "destroyed...monthly bank statements to cover-up additional forgeries;" "destroyed all records" and "embezzled approximately $39,000.00 from the estate"); rails against one prior attorney for the estate ("deceitfully misrepresenting himself;" "defied two court orders;" "felonies, fraud, forgeries, theft, embezzlements and a tangled web of falsified records to cover-up the wrong-doing;" 10 years



of trama [sic], threats, insults, verbal and non-verbal absue inflicted" by him or her; his "ruthless, vicious interference;" "conspired;" "concealed;" acted"illegally;" "also practiced deceit;" and "cover-up [of] massive fraud and felonies committed against the estate."); rails against one of her own lawyers ("concocted a scheme;" "lied;" particpated in a "fraudulent" reprt, "fraudulent accounting" [sic] and a "fraud scheme"; and rails against a prior accountant (falsified bank deposits to cover-up Parker's embezzlements;" "falsified grain sales;" and "falsified bank account ownersip.")

Her unsupported vilification extends to a county judge ("brutually assaulted Conway:" "cover up" of "irregularities;" "illegal court order;"), a district judge ("[f]alse statements;" "illegal Amendment to Judgment...to cov-

totaling #38,836.67 and labeling "Missing Money" (Exhibit O).

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er-up fraud;") and a clerk of court ("disoriented, hysterial behavior").

She proceeds with scathing accusations against First Trust and those associatiated with it. She rails that First Trust "breached their fiduciary duty," "committed perjury," "employed perjury, deception, misrepresentation and fraud to cover-up" assets, and "committed perjury." She accuses an officer of First Trust of making "thirteen false statements...to cover-up" prior "illegal" activities of a lawyer for the estate, and accuses a lawyer for First Trust of "making sixteen false statements ...to cover-up" such activities.

None of these vituperations are supported by any references to the record. Thus, Conway's presentation is lacking in evidence though lengthy in vilification.

We first summarize what is not involved. No specific claim is made of any mishandling by First Trust of property of the estates which is held. Rather, the principal issues relate to its accounting for funds and property for the period before it became responsible. No claim is made that the essential equal distribution of remaining assets on hand is incorrect. Rather, Conway disputes whether First Trust followed proper procedures and was propertly allowed compensation and expenses.

In this context, we address issues that Conway present pro se. Although she had had eleven differnt attorneys in the course of eleven years of strife, she was not represented by counsel at the hearing on the final account and she is not represented by counsel on this appeal. She has been told before that "the rules or statutes should not be

modified or applied differently merely because a party not learned in the law is acting pro se."

Kjorvestad III, 304 N.W. 2d at 85. We consider her arguments accordingly.

I. RECONSTRUCTED ACCOUNT

Pursuant to a settlement stipulation in open court, approximately twenty quarters of farm land and substantial cash were divided and distributed equally to Parker and Conway in 1977. Remaining grain on hand was ordered distributed in 1978.

On September 4, 1980, First Trust was appointed successor personal representative of both estates under supervised administration. Since the duties and powers of a personal representative commence upon appointment, S30.1-18-01, NDCC, the order appropriately specified that First Trust was "hereby absolved of any and all liabiltiy for any actions, transactions, errors or omissions of

Lorraine Parker and Eileen Conway in their capacity as co-executrices prior to the date of its appointment as successor personal representative." An accompanying order directed First Trust to "reconstruct as best it can a report and accounting of the estates...for the period from January 23, 1978, through September 4, 1980, and upon completion submit said report and accounting to the County Court for approval." Parker and Conway were ordered to account and to "deliver immediately to First Trust...all of the assets of each estate in their possession which have not heretofore been distributed or liquidated." They were further directed "to cooperate in every way possible to assist First Trust...in marshalling said remaining assets."

On November 17, 1982, First Trust filed a Petition for Approval of Reconstructed Account and Report for the per-

from January 23, 1978 to September 4, 1980. The petition showed that no report and account had been filed by either Parker or Conway, but listed checking accounts, certificates of deposit, mutual funds, and common stock of the estates which First Trust had gathered. This account itemized coins and jewelry found in a safe deposit box of the estate and described several town lots remaining in the name of Selma Kjorvestad.

Conway was notified of the hearing on this account. She "admits that there was a hearing on December 7, 1982, regarding First Trust's petition for approval of [this] reconstructed account and report." The hearing was not recorded or transcribed. Although Conway claims that First Trust withdrew its Reconstructed Account at the hearing, there is nothing to support this assertion.

The county court filed its order on December 8, 1982, which "allowed and settled" the Reconstructed Account. Contrary to Conway's claims, the order was not "secret." It was publically filed. Therefore, it is presumed regular and correct until shown otherwise by evidence. N.D.C.C. S31-11-03(15), (16) and (17); Midboe v. Midboe, 303 N.W. 2d 548, 551 (N.D. 1981).

Conway sees something sinsister in the fact that the order was dated and filed on the day following the hearing. We do not. It is not out of the ordinary for a judge to enter an order days or even weeks after a hearing, depending on the difficulties in the judge's deliaberaticn and schedule.

Conway's chief complaint is that she did not receive notice of entry of the order approving the Reconstructed Account. Therefore, she argues, she



should have been able to offer additional evidence relating to the Reconstructed Account at the hearing on the final account, but was foreclosed from doing so when the county judge ruled that he would "not allow any inquiries or presentation of evidence to matters that precede September 4, 1980." We believe that Conways' argument misconceives both the purpose of the hearing on the final account and the effect of lack of notice of entry of the order.

The purpose of the hearing on the final account was to consider First Trusts's conduct of the estates, not that of Conway and Parker. First Trust was not responsible for assets prior to September 4, 1980. First Trust's limited responsibility for accounting prior to September 4, 1980, was only "as best it can." It had no help from either Parker or Conway.



Since the hearing on the Reconstructed Account had been held, Conway was not necessarily entitled to present further evidence on it. Whether such evidence was material to the final account was largely within the sound discretion of the county court. Okken v. Okken Estate, 348 N.W. 2d 447, 451 (N.D. 1984); Walling Chemical Co. v. Bigner, 349 N.W. 2d 647 (S.D. 1984). Since only First Trust's handling of the remaining estates was involved in the hearing on the final account, the county judge did not abuse his discretion in ruling that evidence concerning the Reconstructed Account was not material.

Lack of notice of entry of an order after a hearing does not leave the hearing open-ended, as Conway assumes. She had notice of the hearing and participated in it. The hearing was held and the order was publicly filed. The county co-

urt no doubt had power to grant relief, if duly made; Rule 60(b), N.D.R. Civ. P. However, this does not mean that the subject of the hearing otherwise remained open for more evidence at later hearings. Ordinarily, the effect of lack of notice of entry of an order in probate in that the time for appeal remains open. See In the Matter of Alf J. Bo, 365 N.W. 2d 847, 850 (N.D. 1985) ("No notice of entry of the order has been served in this case. Therefore, the time for appeal technically has not yet commenced to run."); Matter of Estate of Erickson, 368 N.W. 2d 525, 528 (N.D. 1985)

The general theory as to all formal proceedings under the Probate Code is that "[a]n order is binding as to all who are given notice of the proceeding...'" S30.1-12-06, N.D.C.C. Conway clearly had prior notice of the proceeding. Cf. Matter of the Estate of Holmes,

559 p. 2d 344, 6 A.L.R. 4th 594 (Mont. 1979) (no notice of hearing and no notice of entry of order).

On the other hand, in supervised administration such as these, interim orers may be issued at any time; N.D.C.C. S30.1-16-05. Editorial Board Comment to his section of the Uniform Probate Code makes it clear that a supervised administration is considered a "single proceeding," requiring notice to commence and to close, and goes on to observe that provision for notice of interim orders was left to be covered by court rule, although"[a] demand for notice under section 30.1-13-04 would entitle any interested person to notice of any interim order which might be made in the course of supervised administration;" 6 N.D.C.C. at p. 124. (Compare S30.1-12-07, N.D.C.C.; "Unless supervised administration as described in chapter 30.1-16

is involved, each proceeding before the court is independent of any other proceeding involving the same estate;..." Also compare S30.1-16-01, N.D.C.C., on the nature of proceedings in supervised administration.) Conway makes no showing that she filed a demand for notice of entry of orders, as contemplated by S30.1-13-04, N.D.C.C. In any event, that section goes on to provide: "The validity of an order which is issued or filing which is accepted without compliance with this requirements shall not be affected by the error...."

We observe that, unless contrary to or inconsistent with the Probate Code, "the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this title;" S30.1-02-04, N.D.C.C. (emphasis supplied). See Matt-

er of Estate of Bieber, 256 N.W. 2d 879 (N.D. 1977).

Rule 77(d), N.D.R.Civ.P., is the rule of civil procedure which deals with notice of entry. It says:

> "(d) Notice of Entry of Judgment Served. Within 10 days after entry of judgment in an action in which an appearance had been made, notice of such entry, together with a copy of such judgment or a general description of the nature and amount of relief and damages thereby granted, shall be served by the prevailing party upon the adverse party."

While this rule, unlike its Federal counterpart, seems to require notice of entry of only a judgment, we have defined "judgment"bradly as "a judicial determination on matters submitted to a ccurt for decision which fixes the rights and duties of the parties." Matter of Estate of Raketti, 340 N.W. 2d 894, 898 (N.D. 1983). But, we do not need to decide in this case whether Rule 77(d), N.D.R.Civ.P., requires notice of entry of an interim

order in a supervised administration. For this case, it is enough to point out that because of express provisions of other rules of civil procedure, the effects of failure to give notice of entry of any order are that it extends the time periods, both for relief from an order under Rule 60(b), N.D.R.Civ.P., and for appeal under Rule 4(a), N.D.R. App.P. The time periods of both of these perinent procedural rules are expressly tied to service of ntoice of entry or judgment involved.

The record clearly shows that Conway and her then counself knew by December, 1983, that the order approving the Reconstructed Account was on file. Conway made no effort thereafter to seek relief from that order.

It is well established that an interlocutory order may be reviewed on appeal from the final order or judgment in



the matter. Suburban Sales v. District Court of Ramsey, 290 N.W. 2d 247, 251 (N.D. 1980); United Hospital v. Hagen, 285 N.W. 2d 586 (N.D. 1979)

We conclude that an interim order in supervised administration, pursuant to a hearing upon notice but where notice of entry is not given, stands unless duly vacated pursuant to the rules of civil procedure. Further, it is subject to appellate review as an interlocutory order, upon appeal from a final order completing settlement of the estate. See S30.1-16-05 and 30.1-21-01, N.D.C.C.[1] Thus, on this appeal of the order approving the final account and final distribution, the question is whether there was any error in the interim order approving the Reconstructed Account.

But, Conway's only showing is that she lacked notice of the order approving the Reconstructed Account. Although she

was represented by counsel at the hearing on the Reconstructed Account, there is no transcript. She took no steps to have a statement of the evidence or proceedings "from the best available means" prepared for this appeal; see Rule 10(f), N.D.R.App.P. Nor, did she make an offer of proof when the county judge limited her evidentiary presentation at the final account hearing. Thus, we have neither evidence nor record to reconsider Conway's complaints about deficiencies in the Reconstructed Account. Therefore, the record of this appeal fails to show any error in the Reconstructed Account.

We have often pointed out that this court will not review claimed errors where there is no record and no offer of proof by which the claim of error can be properly evaluated. Cargill, Inc.

v. Davanaugh, 238 N.W. 2d 133 (N.D. 1975); Jore v. Saturday Night Club, Inc., 277 N.W. 2d 889 (N.D. 1975); See Rule 103(A), N.D.R.Ev.: "Error may not be predicated upon a ruling which...excludes evidence unless a substantial right of the party is affect, and...the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." (emphasis supplied).

We have studied the transcript of the hearing on the final account to consider whether the substance of evidence excluded was apparent from the context and to assess whether any substantial right of Conway was affected by the exclsuion of evidence at that hearing. The substance of evidence excluded is not apparent from the context, as no offer of proof was made, we find no error. Halverscn v. Pet, Inc., 261

N.S. 2d 887, 894 (N.D. 1978)

For example, Conway asserted in her cross-examination that "there is still grain in the elevator belonging to Guy Kjorvestad," implying that the Reconstructed Account is erroneous for omitting grain. No specific elevator or warehouse receipts were identified. The Reconstructed Account by First Trust recited that its investigation indicated "grain was distributed to the heirs" prior to the appointment of First Trust and concluded, "[n[o grain on hand belonging to the estate." The record shows that on July 13, 1978, (which was after division and distribution of the farm land), the county court ordered that "[t]he grain presently on hand owned by the estates...shall be distributed in equal shares to the heirs, Eileen Conway and Lorraine Parker. The mechanics of distribution shall be that all grain presently

held by the estates shall be delivered to the elevators 50 per cent in the name of each heir, with documents of title being delivered by the respective elevators for each heirs"share." Thus, the insinuations Conway makes about grain on hand are contrary to the record. She may not have availed herself to an existing order of distribution of grain, but if she has not, that is not a responsibility of First Trust nor a deficiency in its Reconstructed Account. Furthermore, Conway did not acccunt for any grain on hand at the time she was removed. This contention plainly lacks substance.

As another example, Conway maintains that the Reconstructed Account fails to show all the coins and items originally inventoried in safe deposit boxes. What First Trust is expected to do about missing items is not spelled out. Conway offered no evidence as to

the present whereabouts of any missing items. This lack of proof and her own failure to account demonstrate that her effort to place responsibility on First Trust to further account for a period prior to its appointment is without merit.

The County Court's order approving the Reconstructed Account determined that neither Parker or Conway" have complied with the Judgment of the District Court, dated June 19, 1980, directing either of [sic] both of them to file a complete report and account as to the assets" of the Kjervestad estates. Conway does not dispute this. She cannot complain about First Trust's reconstructed accounting when she had the primary duty but ignored it.

Absent credible evidence to consider the conjectures Conway makes, we conclude that no error has been shown in the order

allowing the Reconstructed Account. We also conclude that there was no error in the county court's discretionary ruling excluding evidence about the Reconstructed Account at the hearing on final account.

II. COLLECTION OF ASSETS

Conway repeats similar complaints about missing assets by insisting that First Trust had "a duty to fully investigate and determine if any assets were not accounted for, and alos negate the possibility that fraud was committed." She also makes various vague claims as to missing funds, ranging from $39,000 to $882,740, but there is no coherent identification of where or when these funds allegedly disappeared. Conway castigates First Trust for not doing enough to collect these assets which she believes are missing. She points out that a successor Personal Representative "has the same power and duty as

as the original personal representative complete the administration and distribution of the estate as expeditiously as possible...N.D.C.C. S30.1-18-16.

Conway cites Miller v. First National Bank of Linton, 62 N.D. 122, 242 N.W 124 (1928) and Dolphin v. Peterson, 63 N.D. 792, 249 N.W. 784 (1933) to the effect that an executor of an estate has a duty to account for all property belonging to the estate. She also cites several cases from other states which imply that successor fiduciaries must account "for the entire period of time in question rather than simply just after their appointment." Those may sound general principles, but have no application to the circumstances of this case.

Our Probate Code specifically provides:

> "Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated." N.D.C.C.S30.1-17-13 (emphasis supplied).

First Trust's duties were appropriately otherwise ordered as to responsibility for prior actions of Parker and Conway.

"The duties and pwoers of a personal representative commence upon his appointment." N.D.C.C. S30.1-18-01. When appointed, First Trust was expressly absolved of any and all liability for any actions, transactions, errors or omissions of...Parker and...Conway...prior to the date of its appointment..." This order was congruent with the Probate Code which allows a personal representative to leave property with those who are "presumptively entitled thereto unless necessary for purposes of administration; N.D.C.C. S30.1-18-09.

Prior filed accountings and prior

distribution to the sisters demonstrate that First Trust was not obligated to collect all assets of the estates. Its responsibility extended only to remaining property of the estates that actually came into its hands. We perceive no basis to impose fiduciary responsiblity on First Trust for assets that were never turned over to it by Conway or Parker.

Conway argues that it is sufficient to impose a greater fiduciary duty on First Trust that it "had been alerted that asserts [sic] may be missing...and that there may have been wrongdoing on the part of a previous coexecutrix." Mere possibility of misconduct by a prior fiduciary is not alone sufficient reason to hold a successor fiduciary responsible for it.

The record is barren of evidence showing that present whereabout or custody of anh specific missing assets.

Conway herself wholly failed to account for any. Under the circumstances we conclude that First Trust did not have any fiduciary duty to Conway in collecting assets of the estates.

III. PERFORMANCE OF DUTIES

Conway insists that First Trust failed to perform its statutory duties because no complete inventory and appraisal in her mother's estate was ever made, and no notice to creditors was ever given in that estate. In doing so, she insists that procedural provisions about inventory, appraisal and notice to creditors of the old Probate Code in effect when her mother died in 1974 should apply.

Our current Probate Code was adopted from the Uniform Probate Code in 1973, effective July 1, 1975. N.D.C.C. S30.1-35-01(1). It specifically provided:

> "b. The title applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except

> to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this title." N.D.C.C. S30.1-35-01(2)

The old Probate Code, chapters 30-13, 30-15, and 30-20, was simultaneously repealed. 1973 S.L., ch. 257, S82.

We find no procedure from the old Probate Code which should be applicable in this decade to First Trust "in the interest of justice." Nor, do we find any procedure in the new Probate Code which is infeasible of application to these estates.

Conway points out that Kjorvestad I, 250 N.W. 2d at 276, approved application of ol Probate Code procedures to those disputes in 1977. In that decision this Court said: "Application of former law was in the discretion of the trial court and we do not find an abuse of that discretion...." This prior discretionary

application of old procedures did not fix procedural rights for the eternity of these estates. It is axiomatic that procedural modes, as dist inguished from substantive rights, are not vested and are subject to repeal, modification or change. Kessler v. Thompson, 75 N.W. 2d 172, 178 (N.D. 1956).

The lack of formal inventory and appraisement in this disrupted estate is not significant in view of the extensive tax filings and litigation, which First Trust concluded, and in view of the prior major distributions in these estates before First Trust was appointed to wind them up. Nothing supports imposing a greater burden upon First Trust than upon Conway herself. Again, her own failure to cause inventory and appraisal while she was responsible, as well as her own failure to account to her successor, demonstrates the

the lack of merit in her claim that First Trust failed to perform statutory duties.

As to Conway's complaint that notice to creditors had not been given in her mother's estate, we observe that this saved needless expense to the estate since all creditors' claims against the estate were long since barred by the lapse of time in this estate. N.D.C.C S30.1-19-03.

We hold that First Trust satisfactorily performed its duties of administering and distributing the remaining balance of Mrs. Kjorvestad's estate "as expeditiously as possible."

IV. ADDITIONAL COMPENSATION

Conway argues that it was "clearly erroneous" to award compensation to First Trust because total fees paid to personal representative exceed amounts authorized by the old Probate Code and be-

cause First Trust failed "to perform its statutory duties." Our consideration of these same issues earlier in this opinion dispose of these contentions.

Conway complains that administrative costs have been excessive. There is no recognition by her of her own obsessive role in this. We observe that, in addition to the direct costs to these estates of her litigation, she was reimbursed a total of $41,054.25 in expenses after her removal, when her sister waived any such claim. Thus, any excessiveness in administration costs cannot be attributed to First Trust.

First Trust insists that it has done "our best in a very difficult situation," and suggests that "some bonus...in the nature of combat pay be in order." Pointing to Conway's repeated litigation over payment of fees and expenses in past proceedings in these estates, see Kjorvestad

I, II, and Iv, First Trust correctly observes that "Conway has no obvious objection to litigation, except for payment of its cost." Indeed, Mrs. Conway has paid no heed to this court's prior warnings about dissipating funds of the estates through rancorous litigation; see Kjorvestad II, 287 N.W 2d at 468 and Kjorvestad III. 304 N.W. 2d at 87.

Without cooperation from Conway, First Trust collected remaining assets and funds (some of which had been in non-interest bearing status for many months), completed and filed amended estate tax returns, prosecuted and resolved complex estate tax litigation in the federal courts, filed fiduciary income tax returns, prepared the Reconstructed Account, and prepared and submitted its final account and petition for distribution. It appears that First Trust diligently sough to dispatch its duty to complete the

administration of both estates as "expeditiously as possible" under the circumstances.

The Probate Code authorizes reasonable compensation to a personal representative and to those properly employed to assist in administration of any estate, including reasonable attorney's fees to defend or prosecute any proceedings in good faith. N.D.C.C. S30.1-18-19, 30.1-18-21 and 30.1-18-20. The county court approved the compensation as reasonable. Under N.D.R.Civ.P., Rule 52(a) we are required to affirm the findings of the county court on compensation unless they are "clearly erroneous." No evidence was submitted by Conway to dispute the services itemized or the hourly rates charged. We conclude that the county court's approval of compensation was not erroneous.

V. COSTS OF THIS APPEAL

First Trust suggest that we consider assessing its costs and attorney's fees on this appeal against Conway's share of the estates as an appropriate method for dealing with her unrestrained and unsubstantiated accusations. We agree.

We have fully examined the record and carefully considered her issues to satisfy ourselves that there was no serious symptom in her legal hypochrondria. We found non. We conclude that her sweeeping accusations are unreasonable and that her claims of misconduct by First Trust are entirely unsubstantiated.

This public airing of her private obsession ought to be at her personal expense. As the Nebraska Supreme Court recently observed: "It seems to us that the probate code should not be construed

so as to permit one heir or devisee to finance his or her lawsuit against another heir or devisee out of the funds of the estate..." In Re Estate of Keating, 371 N.W. 2d 107, 109 (Nb. 1985).

Accordingly, we exercise our powers under Rule 38, N.D.R.App.P., and direct an award accordingly. We order that First Trust be paid its reasonable compensation, attorney's fees and costs on this appeal out of Conway's share of the estate only, rather than from the total estate as has been done heretofore.

VI. CONCLUSION

We hold that there is no evidence that the Reconstructed Account was erroneous and we hold that the county judge did not err in excluding further evidence concerning that prior period at the later hearing on the final account. We also hold that First Trust satisfactorily performed its fiduciary duties to

collect assets and account for them.

We affirm the Order Approving the Reconstructed Account, the Order Approving the Final Account and Directing Distribution, and the County Court's order approving compensation and expenses to First Trust and its attorney. We direct that First Trust be paid its reasonable compensation, attorney's fees and costs on this appeal, as determined and approved by the county court, from the remaining share of the estates distributed to Conway.

Herbert L Meschke

Vernon R. Pederse S.J

Gerald W. VandeWalle

H. F. Gierke III

Ralph J. Erickstad, C.J.

Pederson, S. J., sitting in place of Levine, J., disqualified.

[1] An interim order in supervised administration may also be reviewed upon direct appeal when there is an express determination that there is no just reason for delay and an express direction for its entry as final judgment under Rule 54(b), N.D.R.Civ.P.,: Kjorvestad IV, 345 N.W. 2d at 841-842.

File Nos. 10,866-10,867

STATE OF NORTH DAKOTA
ss
IN THE SUPREME COURT

Appeal from the (County) Court of Nelson County

IN THE MATTER OF THE ESTATE OF
GUY KJORVESTAD, SR. DECEASED, AND
IN THE MATTER OF THE ESTATE OF
SELMA KJORVESTAD, DECEASED.

First Trust Company of
North Dakota,

Petitioner and Appellee

v.

Eileen Conway,

Respondent and Appellant

This appeal having been heard by the Court at the June, 1985 term before: The Honorable Ralph J. Erickstad, Chief Justice; the Honorable Gerald W. VandeWalle, the Honorable H.F. Gierke III, the Honorable Herbert L Meschke, the Honorable Vernon R. Pederson, Surrogate Judge, Justices;

and the Court having considered the appeal, it is ordered and adjudged that the ORDERS of the court below be and the same ARE HEREBY AFFIRMED.

IT IS FURTHER ORDERED AND ADJUDGED THAT THE COSTS ON APPEAL WILL BE ASSESSED IN ACCORDANCE WITH THE OPINION FILED HEREWITH.

Dated October 1, 1985

Attest: Luella Dunn

Clerk of the Supreme Court

By the Court:

Ralph J. Erickstad

Chief Justice

North Dakota Supreme Court

IN THE COUNTY COURT OF NELSON COUNTY

STATE OF NORTH DAKOTA

In the Matter of the Estate)
)
of Selma Kjorvestad, Deceased.)

AMENDED FINDING OF FACT, CONCLUSIONS OF LAW AND ORDER UPON REMAND

The Petitioner, First Trust Company of North Dakota, filed a Final Accounting and Petition for Settlement and Distribuation of the Estate which came on for hearing at the Nelson County Courthouse, Lakota, North Dakota, on September 21, 1984. The Petitioner appeared by Pam Anderson, its Probate Officer, and by J. Philip Johnson, its attorney. Lorraine Parker and Eileen Conway, heirs of the estate, appeared personally. Mrs. Conway filed and voiced various objections to the Petition and general status of the estate. Mrs. Parker made no objections.

Findings of Fact, Conclusions of Law and Order allowing the final account and

approving distribution of the remainder of the estate were entered October 2, 1984. Eileen Conway appealed from that Order to the North Dakota Supreme Court which affirmed the Order, subject to instructions contained in its Opinion dated October 1, 1985. Petition for Rehearing was denied October 28, 1985.

Upon the testimony, exhibits and affidavits presented and upon the records and files in this estate, the Court makes the following Amended Findings of Fact:

FINDINGS OF FACT

1. The estate has been subject to a host of legal proceedings, hearings and appeals which have substantially delayed and extended this closing and which were, with few exceptions, initiated by Mrs. Conway through a long succession of attorneys.

2. Selma Kjorvestad died testate on May 15, 1974. Petitioner is the duly appointed, qualified and acting successor Per-

sonal Representative of the decedent's estate.

3. The previous Personal Representatives of the estate, Eileen Conway and Lorraine Parker, were removed by Order of the District Court on June 19, 1980. The Petitioner was appointed successor Personal Representative on September 4, 1980.

4. Pursuant to Stipulation and Order of the Court, an interim distribution of real estate and other assets constituting the bulk of the estate were made to the heirs, Eileen Conway and Lorraine Parker, on or about February 21, 1979.

5. On December 6, 1982, the Court approved a Reconstructed Report and Account for the estate for the period January 23, 1978 to September 4, 1980.

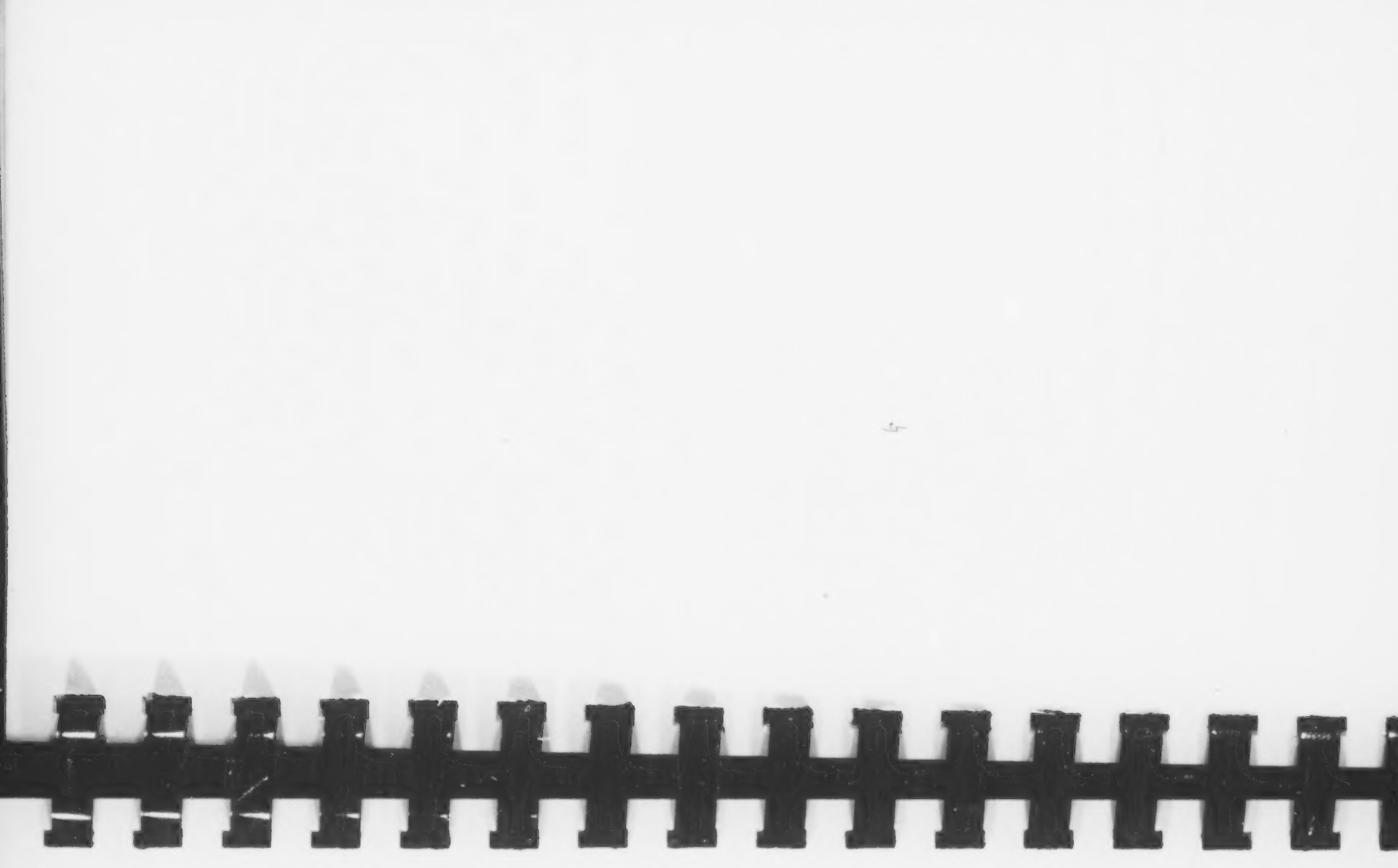
6. An Inventory and Appraisement of all property of the estate known to the successor Personal Representative has been filed and audits conducted by the

Internal Revenue Service verifying the nature, extent and valuation of assets of the estate. Under previous Order of the Court, Eileen Conway and Lorraine Parker was directed to deliver all assets of the estate to their possession and assist with marshalling any remaining assets.

7. Notice to Creditors of the decedent has been published as required by law and the time for presenting claims that arose prior to the death of the decedent has expired.

8. All debts of the decedent and of the estate, and all expenses of administration thus far incurred, except those approved this date, and all taxes that have been attached to or accrued against the estate have been paid.

9. The Petitioner filed a Final Account detailing receipts and disbursements in the administration of the estate from September 4, 1980, totaling receipts of



and disbursements of $215,020.90 and the estate is in a condition to be closed.

10. Allegations of misconduct on the part of attorneys, court officials, the successor Personal Representative and Lorraine Parker as made by Eileen Conway in documents filed with the Court are totally unsubstantiated by credible evidence. The adminsitration of the successor Personal Representative has proceeded in a competent and professional manner delayed and deterred only by the objections and proceedings initiated by Eileen Conway.

11. The decedent's will was previously admitted to probate to formal proceedings following notices required by law.

12. The decedent's will directs that the property remaining after payment of debts, claims, taxes, costs and expenses be distributed in equal shares to the surviving daughters of the decedent, Eileen Conway and Lorraine Parker.

13. The Stioulation and Interim Distribution of the parties on or about February 21, 1979, contemplated certain agreed adjustments in the respective distributions between the heirs.

14. The assets remaining in the estate consist of the following:

a. Miscellaneous jewelry of no substantial value.

b. Record title of the West 12 feet of Lot 3 and all of Lots 4 and 5, Block 32, White's First Addition to the City of Aneta, North Dakota;

c. Money market account in the amount of $34,151.34 as of April 30, 1984.

15. In view of the extended litigation history of this estate a reasonable reserve for additional litigation expenses is appropriate.

16. Necessary and reasonable attorney's fees based upon hourly charges, and appeal costs, were incurred by Pancratz,

Yuill, Wold, Johnson & Feder, attorneys for the Personal Representative, arising from the appeal of the Orders in this and the companion estate in the amount of $4,433.36.

17. Necessary and reasonable Personal Representative's fees based upon customary charges were incurred as a result of the appeal of Order in this and the companion estate in the amount of $4,306.53.

CONCLUSIONS OF LAW

1. The Final Report and Account of the successor Personal Representative is approved and allowed.

2. A litigation reserve in the amount of $5,000.00 shall be retained by First Trust Company of North Dakota for a period of one year from the date of entry of this Order and such account shall be applied toward any additional expenses of First Trust Company and its attorneys

arising from claims of litigation relating to the estate subsequent to such date. The balance shall be distributed in equal shares to Eileen Conway and Lorraine Parker upon expiration of that period.

3. The attorneys' fees and Persoanl Representative's fees and costs incurred by First Trust Company of North Dakota are approved for payment from share of the Guy and Selma Kjorvestad Estates distributable to Eileen Conway. First Trust Company may allocate such payments between the estates as it deems reasonable.

4. The Personal Representative shall distribute to Eileen Conway record title to the West 12 feet of Lot 3 and all of Lots 4 and 5, Block 32, White's First Addition to the City of Aneta, North Dakota, together with one-half of the miscellaneous jewelry, as selected in the discretion of the Personal Representative, and one-half of the outstanding balance

of the account, less approved fees and costs.

5. The Personal Representative shall distribute to Lorraine Parker one-half of the miscellaneous jewelry, as selected in the discretion of the Personal Representative, and one-half of the outstanding balance of the account.

6. The successor Personal Representative shall be discharged from all claims or demand of any interested person as to matters relating to the accounting and distribution of this estate as determined by this Order.

7. First Trust Company of North Dakota shall be discharged and released from its duties as Personal Representative, subject only to distribution as provided under this Order.

AMENDED ORDER

Upon the foregoing Amended Findings of Fact and Conclusions of Law, it is

ORDERED that the account, as described, be allowed and that distribution and discharge upon the terms and conditions set forth in the Conclusions of Law be authorized and approved.

Dated this 5th day of December, 1985.

Ronald M. Dosch

County Judge

Amended Findings of Fact, Conclusions of Law and Order Upon Remand, prepared by: Law Offices of Pancratz, Yuill, Wold, Johnson & Feder, P.C., Professional Corporation, 414 Gate City Building, P. O. Box 1680, Fargo, North Dakota 58107. Telephone (701) 235-5515



Filed by Clerk October 28, 1986
Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

IN THE MATTER OF THE ESTATE OF
GUY KJORVESTAD, SR., DECEASED, AND
IN THE MATTER OF THE ESTATE OF
SELMA KJORVESTAD, DECEASED.

First Trust Company
of North Dakota,

Petitioner and Appellee

v.

Eileen Conway

Respondent and Appellant

Civil Nos. 11, 173-11,174

Appeal from the County Court of Nelson County, Northeast Central Judicial District, the Honorable Ronald M. Dosch, Judge.

APPEAL DISMISSED.

Opinion of the Court by Meschke, Justice.

Pancratz, Yuill, Wold, Johnson & Feder, P. W. Box 1680, Fargo, ND 58107, for petitioner and appellee; argued by J. Philip Johnson.

Eileen Conway, 2922 S. Germantown Road, Germantown, TN 38138, for respondent and appellant; appeared pro se.

First Trust Co. v. Conway

Civil Nos. 11, 173 and 11, 174

MESCHKE, Justice.

In the Matter of Estate of Kjorvestad, 375 N.W. 2d 160, 171 (N.D. 1985), ["Kjorvestad V"] we deem Eileen Conway's fifth appeal frivolous and directed "that First Trust be paid its reasonable compensation, attorney's fees and costs on [the] appeal as determined and approved by the county court, from the remaining share of the estates distributed to Conway." Upon remand, the county court approved payment of $6,739.89 in compensation, attorney's fees and costs for the



appeal. Conway has appealed again, making this "Kjorvestad VI[1]. We dismiss her appeal because the order was entered without notice and because Conway did not seek a hearing before appealing.

After remand of Kjorvestad V, counsel for First Trust simply mailed an affidavit and a proposed "Amended Order Upon Remand" to County Judge and to Conway. The affidavit listed First Trust's compensation, attorney's fees and costs for that appeal. The Amended Order upon Remand was the same as that affirmed on appeal, except that findings were added about the amount of compensation, attorney's fees and costs for the appeal and that amount was ordered paid from Conway's share of the estates.

Unfortunately, counsel for First Trust did not give notice of hearing to Conway under S10.1-18-21. Without a hear-

ing, the county court promptly entered the Amended Order Upon Remand on December 5, 1985. On December 10, 1985, counsel for First Trust notified Conway of entry of the Amended Order Upon Remand, but did not give notice of taxation of costs under N.D.Civ.P. 54(e), as perhaps might have been done. See City of Grand Forks v. Henderson, 297 N.W.2d 450, 451 (N.D. 1980) ("Costs including attorney's fees as allowed by law are taxed as part of the judgement.") Conway appealed on February 1, 1986, arguing that she was deprived of a hearing on the reasonableness of the amounts of compensation and attorney's fees.

On our own initiative, we consider whether an appeal is authorized by statute. Olson v. Job Service North Dakota, 379 N.W.2d 285 (N.D. 1985)

N.D.C.C., S28-27-02, which describes the orders reviewable by this court,

declares in subsection 7:

> "An order made by the district court or judge thereof without notice is not appealable, but an order made by the district court after a hearing is had upon notice which vacates or refuses to set aside an order previously made without notice may be appealed to the supreme court when by the provisions of this chapter an appeal might have been taken from such order so made without notice, had the same been made upon notice."

This precludes appeal of an order entered without notice or hearing "until such time as the judge who made the order has a chance to reconsider his decision in an adversary proceeding." Beck v. Smith, 296 N.W.2d 886, 888 (N.D. 1980), See also Production Credit Association of Minot v. Schlak, 383 N.W.2d 826, 828 (N.D. 1986). Because this Amended Order Upon Remand was entered without notice or hearing, it is not appealable and we dismiss the appeal.[2]

Conway may yet seek a hearing on the reasonableness of the amounts of compensation, attorney's fees and costs.[3]

N.D.C.C. S30.1-18-18 provides:

> "After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation determined by the personal representative for his services may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds." (emphasis supplied)

If Conway seeks a hearing, the only issue to be considered is the reasonableness of the amounts paid for that appeal, Conway cannot continue to reargue and relitigate cumulative amounts of compensation and attorney's fees for all the prior proceedings, as she tried to do on this appeal. "[A]t some point, there must be an end to litigation so that the parties may go about their normal business." Lang v Bank of North Daota, 377 N.W. 2d 575, 579 (N.D. 1985)

We caution Conway that First Trust is entitled to additional reasonable compensation and fees for its participation in any further hearing which she obtains to consider the reasonableness of amounts charged to her, unless she convinces the county court that the amounts allowed were unreasonable. For example, see Jones v. MacMillan Bloedel Containers, Inc., 685 F2d 236 (Ith Cir. 1982). Conway cannot continue to impose her obsessions on others without consequence. To avoid perpetuation of this dilemma, we suggest that the county court make any award therefore at the hearing, when and if it is held.

We want to end this ordeal. If Conway seeks a further hearing and further appeals (unless she should prevail on that appeal), we will direct First Trust to submit its verified and itemized statements for such eompensation, fees and

costs to this court for our action under N.D.R.App.P. 27. While this is not our usual approach to award attorney's fees on appeal, see Wolfe v. Wolfe, 391 N.W. 2d 617, 621 (N.D. 1986) (Levine, J.,concurring specially), we view it as necessary to bring finality to this affair. Compare In re Nordbrock, 772 F. 2d 397, 401 (8th Cir. 1985)(prevailing party to submit verified and itemized bill for attorney's fees and expenses for Court of Appeal's review and approval within fifteen days).

First Trust seeks compensation and attorney's fees for this appeal from Conway under N.D.R.App.P. 38, but under the circumstances, we make no such award. See Ginsburg v. Ginsburg, 352 F2d 337, 338 (9th Cir. 1965).

This appeal is dismissed.

Herbert L. Meschke

Vernon R. Pederson

Gerald W. VandeWalle

H. F. Gierke III

Ralph J. Erickstad, C. J.

PEDERON, S.J., sitting in place of LEVINE, J., disqualified.

[1]See Conway v. Parker, 250 N.W. 2d 266 (N.D. 1977); Matter of Estates of Kjorvestad, 287 N.W.2d 465 (N.D. 1980) Matter of Estates of Kjorvestad, 304 N.W. 2d 83 (N.D. 1980); First Trust Company of North Dakota v. Conway, 345 N.W. 2d 838 (N.D. 1984); and Matter of Estate of Kjorvestad, 375 N.W.2d 160 (N.D. 1985)

[2]First Trust earlier moved to dismiss this appeal on other ground, which we denied. This issues was not raised at that time.

[3]First Trust suggest that Conway failed to timely move pursuant to N.D.R.Civ.P. 52(b) that the county court amend its findings. Since it is palin that Conway can oftain a hearing under N.D.C.C. S30.1-18-21 when she was notified of court approval of the amounts of eompensation and attorney's fees, Rule 52(b) is not applicable.

File Nos. 11,173-11,174

STATE OF NORTH DAKOTA
ss

IN THE SUPREME COURT

Appeal from the (County) Court of Nelson

IN THE MATTER OF THE ESTATE OF

GUY KJORVESTAD, SR., DECEASED, AND

IN THE MATTER OF THE ESTATE OF

SELMA KJORVESTAD, DECEASED.

First Trust Company of

North Dakota, Petitioner and Appellee

v.

Eileen Conway Respondent and Appellant

This appeal having been heard by the Court at the September, 1986 term before:

The Honorable Ralph J. Erickstad, Chief Justice; the Honorable Gerald W. Vande-Walle, the Honorable H.F. Gierke III, the Honorable Herbert L. Meschke, the Honorable Vernon R. Pederson, Surrogate Judge, Justices:

and the Court having considered the appeal, it is ordered and adjudged that the

APPEAL FROM THE (order) of the court below be and the same is hereby DISMISSED. It is further ordered and adjudged that Neither Party recover costs and have and disbursements on this appeal, to be taxed and allowed in the court below.

Dated October 28, 1986.

Attest: Luella Dunn

Clerk of the Supreme Court

Ralph J. Erickstad

Chief Justice

North Dakota Supreme Court



IN COUNTY COURT OF NELSON COUNTY

STATE OF NORTH DAKOTA

In the Matter of the Estates of Guy Kjorvestad and Selma Kjorvestad, Deceased.

FINDINGS AND ORDER APPROVING FEES

The Court, upon its review of the testimony presented and exhibits received at a hearing February 10, 1987 on the petition of First Trust Company of North Dakota, as Personal Representative of the Estates of Guy Kjorvestad and Selma Kjorvestad, for approval of Personal Representative and attorney's fees makes the following findings:

1. Petitioner's exhibits 1, 2, 3, and 4 represent a fair and accurate summary of the expenses incurred and services rendered in the administration of the above referenced estates. The exhibits sufficiently indicate the amounts due and owing the Personal Representative and the attorney. The Court will require no fur-

er documentation of the same.

2. The testimony of Pamela Anderson as an employee of First Trust Company of North Dakota familiar with the instant estates as well as experienced in the administration of other estates is accurate and trustowrthy.

3. The record is void of any indications that the billings are unreasonable, and, based on Pamela Anderson's testimony that the billings were computed in the usual manner for estate practices, the Court hereby approved the same.

4. This Court deems it necessary, in the face of the history of continuing litigation in this case, to authorize the Personal Representative to pay for future services of the Personal Representative and the attorneys based on the same criteria the Court used to allow payment of the fees requested in the January 1987 petition of the Personal Representative.

Said crieria to include (but not be limited to): common accounting practices used by persons administering estate affairs and appropriate hourly rates of attorneys considering the expertise necessary.

5. The Court reviewed numerous North Dakota Supreme Court cases relative to the Kjorvestad estates and finds Attorney Johnson's request for costs and fees incurred in his defense of the current and any future complaints and investigations of the Disciplinary Board of the Supreme Court to be appropriate and timely. Dr. Eileen Conway's propsity to spur litigation and inquiries is evident. The cost of defending such claims should not rest on those persons who successfully defended them The cost of the defense of Attorney Johnson shall be assessed to Dr. Conway's portion of the estate. In the event the complaint is upheld by the Disciplinary Board, Attorney Johnson

shall be responsible for those expenses personally.

CONCLUSIONS OF LAW AND ORDER

Based on the foregoing findings, the Court makes the following conclusions of law:

The billings presented to the Court for Attorney's fees and Personal Representative's fees in the Estate of Guy Kjorvestad and Selma Kjorvestad are reasonable and allowed in full. Payment of reasonable fees for future services and expenses shall be allowed without prior approval of this Court provided, the fees are "reasonable" according to the criteria outline in finding #4.

Defense costs incurred by Attorney Johnson relating to the current and any future Disciplinary Board actions taken by Dr. Eileen Conway shall be assessed against and paid out of Dr. Conway's portion of the estates, unless the Disciplinary Board finds the complaints to be

meritorious, in which case, Mr. Johnson will bear the cost of his defense.

It is therefore ordered payment be allowed in the amount of $5,058.40 to First Trust Company of North Dakota and $8,762.36 to Attorney J. Phillip Johnson. Additional reasonable fee payments to the attorneys and the Personal Representative shall be allowed for future services or costs incurrred. Defense costs of the Disciplinary Board actions sahll be paid from Dr. Conway's share of the above estates unless the complaint prevails.

Dated this 23rd day of February, 1987

BY THE COURT:

JONAL H. UGLEM

NELSON COUNTY JUDGE

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

First Trust Company of

North Dakota, Petitioner and Appellee

v.

Eileen Conway Respondent and Appellant

In the matter of the Estates of Guy Kjorvestad and Selma Kjorvestad, Civil No. 870110 and 870111

Appeal from County Court of Nelson County, the Honorable Jonal H. Uglem, Judge.

AFFIRMED IN PART AND REVERSED IN PART.

Opinion of the Court by VandeWAlle, Justice.

J. Philip Johnson, of Yuill, Wold, Johnson & Federa, P.C., Fargo, for petitioner and appellee.

Eileen Kjorvestad Conway, respondent and appellant, Germantown, Tennessee, pro se.

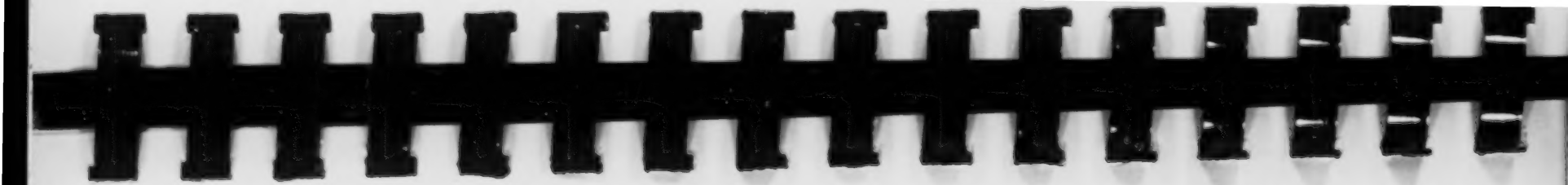
Civil Nos. 870110 and 870111

FIRST TRUST CO. V. CONWAY

VandeWalle, Justice.

Eileen Conway appealed from an order of the trial court determining that the billings for attorney fees and personal representative fees in these estates were reasonable. We affirm in part and reverse in part.

This is the seventh appeal involving these estates to which Conway is an heir. The history of this case is related in our previous opinions: Conway v. Parker, 250 N.W.2d 266 (N.D. 1977) [Kjorvestad I], Matter of Estates of Kjorvestad, 287 N.W.2d 465 (N.D. 1980) [Kjorvestad II], Matter of Estates of Kjorvestad, 304 N.W.2d 83 (N.D. 1981) [Kjorvestad III], First Trust Company of North Dakota v. Conway, 345 N.W.2d 838 (N.D. 1984) [Kjorvestad IV], Matter of Estate of Kjorvestad, 375 N.W.2d 160 (N.D. 1985) [Kjorvestad V], and Matter of Estate



of Kjorvestad, 395 N.W.2d 162 (N.D. 1986) [Kjorvestad VI].

The facts pertinent to this appeal are as follows: In Kjorvestad V we affirmed an order of the trial court approving a final accounting and ordering final distribution of the combined estates. At that time we also exercised our power under Rule 38, N.D.R.App.P., to award the personal representative, First Trust Company of Fargo (First Trust), "its reasonable compensation, attorney's fees and costs on this appeal out of Conway's share of the estate only," as a method of dealing with Conway's unrestrained and unsubstantiated accusations. 375 N.W.2d at 171.

Subsequently, on remand, First Trust mailed an affidavit and a proposed amended order to the trial court. However, it failed to give notice of a hearing to Conway. The trial court then entered and the amended order, and Conway appealed. That



appeal was denominated Kjorvestad VI. In that decision we dismissed the appeal because Conway had failed to seek a hearing before appealing. 395 N.W.2d at 162.

Subsequent to our decision in Kjorvestad VI, First Trust again applied for approval of fees. In its application First Trust asked the trial court (1) to approve an amount of fees consistent with our decision in Kjorvestad V; (2) for approval of attorney fees and personla representative fees incurred subsequent to the decision in Kjorvestad V; and (3) for authorization to pay usual and customary personal representative fees and attorney fees without further order of the court. A hearing was held on February 10, 1987. On February 23, 1987, the trial court issued its order approving fees and authorizing future fee payments as set forth in First Trust's application. The order also provided that the costs of the defense of any disciplinary



complaints against First Trust's attorney which were initiated by Conway should be borne by Conway unless found to be meritorious. It is from this order that Conway appealed.

We note that Conway's brief is not confined to the order at issue in this case but is yet another vitriolic attack on the entire course of the proceedings chronicled in our previous decisions. The brief contains vilifying accusation, all of which are unsubstantialed. We do glean from Conway's brief that she also takes issue with the order issued by the trial court. That order consists of two parts and we will analyze them separately.

The first part of the order consists of a determination that the billings presented for attorney fees and personal representative fees are reasonable, and awarding specific amounts; additionally, there is a determination that future pay-

ments for reasonable attorney and personal representative fees are allowed, based on criteria set forth in the order. After reviewing the record we cannot conclude that these determinations are clearly erroneous and therefore they are affirmed. Rule 52 (a), N.D.R.Civ.P.

The second part of the order directs that the costs of defending First Trust's attorney in current and future lawyer disciplinary actions brought before the Disciplinary Board, which are initiated by Conway, be paid from Conway's share of the estates. This order was based solely upon a request by Counsel for First Trust in his closing statement at the hearing that, "in view of the unusual circumstances with respect to the filing of a disciplinary complaint, directing arising out of the administration of these estates, we are requesting that...professional time and expenses attributable to those hearings..

be included as an expense..." Because we believe that disciplinary proceedings are beyond the scope of the probate proceedings, we conclude that the trial court erred in ordering Conway to pay current and future costs of disciplinary actions brought against counsel for First Trust. Therefore, we reverse that part of the order.

On appeal First Trust has requested that we award it costs and attorney fees pursuant to Fule 38, N.D.R.App.P., to be paid out of Conway's share of the estates. Rule 38 provides that "If the court determines that an appeal is frivolous,...it may award just damages and single or double costs including reasonable attorney's fees." We have stated that "An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which could be seen as evidence of bad faith." Mitchell v. Preusse, 358 N.W.2d 511, 514

(N.D. 1984)

Normally, when we reverse part of an order or judgment on appeal, we do not deem that appeal to be frivolous. See, e.g. Matter of Estate of Gustafson, 381 N.W. 2d 308 (N.D. 1986) However, in this case we believe that Conway's extremely litigious nature, her determination to continuously rehash the entire course of the probate proceedings, and the vitriolic nature of her arguments, which only minimally touched on the merits of the order at issue in this case, demonstrate "persistence in the course of litigation which [can] be seen as evidence of bad faith." Thus we deem this appeal to be frivolous under Rule 38, N.D.R. App. P."

First Trust did not include an affidavit documenting the work performed on this appeal in its request for costs and attorney fees under Rule 38. We have previously stated:

> "We suggest that if more than a token amount of attorney fees is sought in a request to this court to impose monetary sanctions under Rule 38, N.D. R. App.P., the request should be accompanied by an affidavit documenting the work performed on the appeal to enable us to calculate the amount of reasonable attorney fees to be assessed." United Bank of Bismarck v. Young, 401 N.W.2d 517, 519, fn. 1 (N.D. 1987)

Because there was no affidavit documenting work on this appeal, we award only double costs and attorney fees in the amounts of $250, which are to be paid out of Conway's share of the estates.

Gerald W. VandeWalle

Vernon R. Pederson S.J.

Herbert L. Meschke

H.F. Gierke III

Ralph J. Erickstad, Ch.J.

PEDERSON, S.J., sitting in place of LEVINE, J., disqualified.

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

JUDGMENT

Eile Nos. 870110 & 870111

Appeal from the County Court of Nelson County.

IN THE MATTER OF THE ESTATE OF GUY KJORVESTAD, SR., DECEASED

First Trust Company of North Dakota, Petitioner and Appellee

v.

Eileen Conway Respondent and Appellant

This appeal having been heard by the Court at the April, 1988, term before: The Honorable Ralph J. Erickstad, Chief Justice; the Honorable Gerald W. VandeWalle, the Honorable H.F. Gierke III, the Honorable Herbert L. Meschke, the Honorable Vernon R. Pederson, Surrogate Judge, Justices; and the Court having considered the appeal, it is ORDERED AND ADJUDGED that the order of the court below be and the same is here-

by AFFIRMED IN PART AND REVERSED IN PART CONSISTENT WITH THE OPINION FILED HEREWITH. It is further ordered and adjudged that Appelle have and recover from Appellant double costs and attorney fees in the amount of $250, which are to be paid out of Appellant's share of the estate.

Dated: May 16, 1988.

By the Court:

Ralph J. Erickstad

Chief Justice

North Dakota Supreme Court

Attest: Luella Dunn

Clerk of the Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Eile Nos. 870110 & 870111

IN THE MATTER OF THE ESTATE OF

GUY KJORVESTAD, SR., DECEASED

First Trust Company of

North Dakota, Petitioner and Appellee

v.

Eileen Conway Respondent and Appellant

ORDERED, that page 5 of the opinion filed in these cases on May 16, 1988, be deleted and that page 5 filed this day be sustituted therefor.

The Supreme Court of the State of North Dakota convened at 11 a. m. this 28th day of June, 1988, with the Chief Justice, the Honorable Ralph J. Erickstad; the Honorable Gerald W. WandeWalle, the Honorable H.F. Gierke III, the Honorable Herbert L. Meschke, the Honorable Vernon R. Pederson, Surrogate Judge, Justices; and the Deputy Clerk of the Supreme Court, Benny Barry,



being present and directed the entry of the above order.

Penny Barry

Deputy Clerk

North Dakota Supreme Court

Filed by Clerk Jun 28 1988
Supreme Court

we believe that future disciplinary proceedings are beyond the scope of the probate proceedings, we conclude that the trial court errred in ordering Conway to pay future costs of disciplinary actions brought against counsel for First Trust. Therefore, we reverse that part of the order.

On appeal First Trust has requested that we award it costs and attorney fees pursuant to Rule 38, N.D.R.App.P., to be paid out of Conway's share of the estates. Rule 38 provides that "If the court determines that an appeal is frivolous,...it may award just damages and single or double costs including reasonable attorney's"

We have stated "An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which could be seen as evidence of bad faith." Mitchel v. Preusse, 358 N.W.2d 511, 514 (N.D. 1984)

Normally, when we reverse part of an order or judgment on appeal, we do not deem that appeal to be frivolous. See, e.g. Matter of Estates of Gustafson. 381 N.W.2d 208 (N.D. 1986). However, in this case we believe that Conway's

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

PETITION FOR REHEARING

File Nos. 870110 & 870111

Appeal from County Court of Nelson County

IN THE MATTER OF THE ESTATE OF

GUY KJORVESTAD, SR., DECEASED

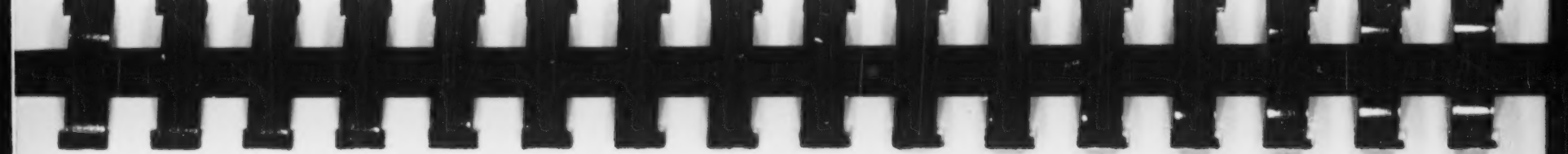
First Trust Company of

North Dakota Petitioner and Appellee

v.

Eileen Conway, Respondent and Appellant

This appeal having been heard by the Court at the April, 1988 term before: The Honorable Ralph J. Erickstad, Chief Justice; the Hnorable Gerald W. VandeWalle, the Honorable H.F. Gierke III, the Honorable Herbert L. Meschke, the Honorable Vernon R. Pederson, Surrogate Judge, Justices; and a petition for rehearing upon the appeal and supporting Affidavit herein having been filed by J. Philip Johnson for the Appellee; and the Court having



substituted page 5 of the original opinion; and petitions for rehearing having been filed by Eileen Conway, pro se, for the Appellant; and the court having advised thereon, it is no here considered, ORDERED AND ADJUDGED, that the petitions be and the same are hereby DENIED.

AND IT IS FURTHER ORDERED, that this case be and it is hereby remanded to the County Court for further proceedings according to law, and the judgment of this court.

Dated: June 28, 1988

By the Court:

Ralph J. Erickstad

Chief Justice

North Dakota Supreme Court

Attest: Penny Barry, Deputy

Clerk of the Supreme Court

NELSON COUNTY CLERK OF COURT

Post Office Box 565

Lakota, North Dakota 58344

Audrey I. Swanke, Clerk Telephone

Susan R. Pederson, Deputy 701-247-2462

December 11, 1987

Ms. - Dr. Eileen Kjorvestad Conway

2922 South Germantown Road

Germantown, Tennessee 38138

Dear Ms. Conway: RE: Nelson County Probate - Cases #3168 & 3263

This is in response to your letter of December 4, 1987, requesting copies of the docket file of the above listed estates - namely Guy Kjorvestad, Sr. and Selma Kjorvestad. I have stated to you on the telephone that I visited with the present County Judge about this request and that we are in complete agreement that the docket sheet is not considered part of this file. Therefore, I will not send a copy to you. Your personal check #1070 in the amount of

$10.00 is enclosed.

Sincerely,

Audrey I. Swanke, Clerk of Court

Nelson County, North Dakota

NELSON COUNTY CLERK OF COURT

Post Office Box 565

Lakota, North Dakota 58344

Audrey I. Swanke, Clerk Telephone

Susan R. Pederson, Deputy 701-247-2462

Undated letter

C. Nicholas Vogel

VOGEL, BRANTNER, KELLY, KNUTSON, WEIR & BYE, LTD.

P. O. Box 1389

Fargo, North Dakota 58107

Dear Attorney Vogel: RE: Est. Guy Kjorvestad
& Selma Kjorvestad
Nelson County Court

This is in response to your letter of December 22, 1987, requesting copies of the docket sheet from the County Court Probate Docket Book. The County Judge for Nelson County and myself consider this office information and not available for public distribution. I do not know if you are familiar with these probates but



the listings are too numerous to copy and really are of value only to this office.

Enclosed herewith is your office check No. 14943 made payable to Clerk of the Nelson County Court.

Sincerely,

Audrey I Swanke, Clerk of Court

Nelson County, North Dakota



IN THE PROBATE COURT OF NELSON COUNTY,

STATE OF NORTH DAKOTA

IN THE MATTER OF THE

THE ESTATE OF SELMA KJORVESTAD, DECEASED.

PETITION TO INSPECT PROBATE FILE,

INCLUDING DOCKET FILE, OF

THE ESTATE OF SELMA KJORVESTAD

Eileen Conway, your petitioner, herein, being duly sworn under oath, deposes and says:

That Selma Kjorvestad died on the 15th of May, 1974 and at the time of her death was a resident of the city of Aneta, in the County of Nelson and the State of North Dakota.

That the said Selma Kjorvestad left a Last Will and Testament which was presented to the Nelson County Probate Court [by the Nelson County Probate Court]. The Estate of Selma Kjorvestad is probated under the North Dakota Century Code. The

State of North Dakota extended the protestion of the North Dakota Century Code under the provisions For Transition of Section 30.1-35-01 of the Uniform Probate Cdoe adoped on July 1, 1975.

That the petitioner is the daughter of Selma Kjorvestad and a beneficiary of the decedent's estate. In violation of NDCC 30-20-15, Notices of secret, underground hearings in the Nelson County Underground Probate Court have been withheld from Eileen Conway, an interested party in the Estate of Selma Kjorvestad. In violation of NDCC 30-20-15, Notices of illegal, secret, counterfeit court orders signed in the Nelson County Underground Probate Court were withheld from Eileen Conway in order to defraud the Estate of Selma Kjorvestad and her beneficiary, Eileen Conway

The entire probate procedure requir-

ed by the North Dakota Century Code was aborted to cover-up the disappearance of $974,740.00 in cash assets belonging to the Estate of Selma Kjorvestad. Section 30-20-01 of the North Dakota Century Code requires an accounting of the $974,780.00 every six months. Cash assets totally $974,780.00 belonging to the debt-free Estate of Selma Kjorvesad have disappeared from the Nelson County Court without a single accounting in fourteen years.

Clerk of Court, Register of Deeds and former Nelson County Probate Judge, Audrey Swanke, and Deputy Clerk of Court, Susan Pederson, have blocked Eileen Conway, an interested person in the Estate of Selma Kjorvestad, from inspecting the Probate File, including the entries of the Docket File, of the Estate of Selma Kjorvestad. The debt-free Estate of Selma Kjorvestad is bankrupt.

That pursuant to the North Dakota Century Code the said Eileen Conway petitions the Nelson County Probate Court that former Nelson County Probate Judge, Clerk of Court and Register of Deeds, Audrey Swanke, and Deputy Clerk of Court, Susan Pederson, be compelled to allow Eileen Conway to inspect and copy documents filed in the Probate File, including entries in the Docket File, of the Estate of Selma Kjorvestad and permit access to the public records of Nelson County in order to protect her interest in $974,780.00 in cash assets and, in addition, farmland and real estate belonging to the Estate of Selma Kjorvestad.

Dated this 4 day of April, 1988.

Eileen Conway

Petitioner

STATE OF TENNESSEE

COUNTY OF SHELBY



On this 4 day of April, 1988, before me personally appeared Eileen Conway, known to me to be the person who is described in and who executed the within and foregoing instrument and severally acknowledged to me that she executed the same.

Patrick F. McLaughlin

Notary Public

Shelby County, Tennessee

My commission expires June 2, 1990

CONSTITUTIONAL PROVISIONS, STATUTES,

RULES AND REGULATIONS APPENDIX

Amendment 14, Constitution of the United State of America, Section I.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citiznes of the United States; nor shall any State deprive any citizens of life-liberty, or property, without due process of law; nor deny person within its jurisdiction the equal protection of the laws.

Amendment 8, Constitution of the United States of America.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

NORTH DAKOTA CONSTITUTION, ARTICLE XI

Section 5. Unless otherwise provided by law, all meetings of public or goernmental bodies, boards, bureaus, commissions, or agencies of the state of any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.

Section 6. Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state of any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

Uniform Probate Code. Chapter 30.1-35-01 (8-101). Time for taking effect--Provisions for transition.

1. This title takes effect on July 1, 1975.
2. Except as provided elsewhere in this title, in the effective date of this title;
   a. It applies to any wills of decedents dying thereafter. No provision of this title, however, shall be effective to invalidate any will executed prior to July 1, 1975, when that will would be valid under the laws of this state in effect at the time of its execution.

North Dakota Office of State Tax Commissioner.

May 28, 1981 letter regarding tax conseqences of deaths prior to July 1, 1975, the date of transition from the North Dakota Century Code to the Uniform Probate



Code:

"In the view of the fact that this decedent passed away prior to July 1, 1975, this matter must be processed through the county court as provided for under Chapter 57-37, North Dakota Century Code, which was in force on the date of death.

NDCC 30-20-15. Account allowed upon proof of notice--Decree must show making of proof--Conclusive evidence of fact.--The account of an executor or administrator must not be allowed by the court until it is proved that notice has been given as is required by this chapter. The decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

NDCC 30-20-13. Persons interested may appear on hearing account.--On the day appointed, or on any subsequent day to which the hearing on the report and account of an executor or administrator may be postponed



by the court, any person interested in the estate may appear and file his exception in writing to the account, and may contest the same.

NDCC Section 30-15-01. Inventory by executor or administrator required.--An executor or administrator of an estate, withint thirty days after his appointment, must make and return to the county court a true inventory and appraisement of all the real and personal property of the decedent which has come to his knowledge.

NDCC Section 30-15-02. Inventory--Contents. --An executor or administrator shall class property inventoried by him, and liens and encumbrances thereon under separate heads as follows:

1. All real estate, with a statement showing what portion thereof, if any is occupied or claimed as a homestead.
2. All the personal property which is deemed absolutely excempt.



3. All additional exempt personal property;

4. The avails of a life insurance policy or of a contract payable by any mutual aid or benefit society when made payable to the deceased, his personal representatives, heirs, or estate, subject to the provisions of section 26-1-18;

5. Other personal property, including all bonds, morgages, notes, book accounts, and other securities or evidences of debt which appear by the books or papers of the deceased to be settled, with a statement of the sums credit thereon if any:

6. Cash, if any, and if no money has come into the hands of the executor or administrator, that fact shall be stated;

7. All other property;

8. The amount of each lien, mortgage, or encumbrance on the real estate or personal property of the decedent, if any,

the balance upon which before entering upon their duties the appraisers must each subscribe an oath administered by a competent officer to the effect that he will truly impartially according to the best of his ability appraise the property of the decedent and discharge all other duties required by him as appraiser. If any portion of the property is in another county the same appraisers may serve or others may be appointed in that county. The notice and oath of the appraisers must be returned with the inventory together with a verified statement of their services and expenses. They shall be allowed a reasonable compensation for their services and the amount of their necessary expenses as may be fixed or approved by the court, to be paid by the executor or administrator as expenses of the administration.

NDCC 30-15-03. Inventory--Form.--The executor or administrator of an estate must sign the inventory and must take and subscribe thereon an oath before an officer authorized to administer oaths that the inventory contains a true statements of:

1. All the estate of the decedent which has come to his knowledge and possession;
2. All money belonging to the decedent;
3. All just claims of the decedent against the affiant; and
4. All liens, mortgages, or other encumbrances on the real and personal property of the deceased.

NDCC 30-15-09. Supplementary inventory--Omitted property.--Whenever property which is not included in an inventory previously made in the same case comes to the knowledge or possession of an executor or administrator, he, within one month thereafter or within such time as the court orders, must make a supple-

mentary inventory and cause an appraisement thereof to be made and returned in like manner.

Section 30-20-01. Accounting by executor or administrator.--An executor or administrator of an estate must render to the county court a full account and report:

1. At the expiration of six months after letters testmentary or letters of administration are issued;

2. At the expiration of one year after such letters are issued;

3. At any time required by the court, either on its own motion or upon the application of any other person interested in the estate;

4. Whenever the administration of the estate is ready for final settlement. The report and account then rendered shall be known as the final report and account.

NDCC Section 30-20-05. Examination of executor or administrator--Vouchers file.--In rendering an account, an executor or administrator must file the vouchers for all charges, debts, claims and expenses which he had paid. He may be examined on oath touching the payments, and also touching the property and effects of the decedent, and the disposition thereof. If any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file, and if a voucher is lost, or for some good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

NDCC Section 30-20-07. Person interested in estate may apply for account.--Any person interested in an estate, at any time before the settlement of the final account of an executor or administrator, may present his petition to the county court praying that the executor or administrator be required to appear and render an account as is required in section 30-20-01, and settling forth the facts showing that it is necessary and proper that such an account be rendered.

NDCC Section 30-20-09. Failure to file report--Order of court--Issuance of attachment.--If any executor or administrator fails, neglects, or refuses, after having been duly cited, to render an account as if required by this chapter or by order of court, the court must:

1. Issue an attachment for contempt against him and require the making of

the account; or

2. Revoke his letters as provided by section 30-12-02.

NDCC Section 30-20-14. At the hearing on an account, any matter not concluded on the settlement of a former account, nor upon any other proceeding in court, may be contested by any party interested for cause shown. The court may appoint one or more referees to examine accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to the referee to be paid out of the estate of the decedent.



in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, whether through arrest, attachment, garnishment, or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of the answer, claim or appearance shall be made upon the person having custody of possession of the property at the time of its seizure.

N.D. Rules of Appellate Procedure, Rule 30.

(a) Duty of Appellant To Prepare and File; Contents of Appendix; Time for Filing; Number of Copies. The appellant shall prepare and file separately bound appendix to the briefs which must contain:

2. the relevant docket entries in the proceeding below:

N.D. Rules of Appellate Procedure, Rule 38.

Damages for Delay.

If the court determines that an appeal is

N.D. Rules of Civil Procedure, Rule 5. Service and Filing of Pleadings and other Papers.

(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discover required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need to made on parties in default for failure to appear except that pleadings asserting new and additional claims for relief against them shall be served upon them

frivolous, or that any party has been dilatory in prosecuting the appeal, it may award just damages and single or double costs including reasonable attorney's fees.

The North Dakota Rules of Disciplinary, Rule 22.

(a) Complaints submitted to the disciplinary board and the testimony with respect thereto are absolutely privileged and no lawsuit predicated thereon may be instituted.

American Bar Association, Standards for Lawyer Discipline and Disability Proceedings.

Section 8.3. Immunity of Complainants. Complainants should be absolutely immune from civil liability for all communications to the agency, but disclosure of the information to anyone else should not be protected.

N.D. Rules of Civil Procedure,

Rule 52(b)

(b) Amendment. Upon motion of a party made not later than 10 days after notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

STATE OF NORTH DAKOTA

OFFICE OF STATE TAX COMMISSIONER

STATE CAPITOL, BISMARCK, NORTH DAKOTA 58505

701-224-2770

Kent Conrad, COMMISSIONER

May 28, 1981

Phil Stafne

Attorney at Law

P. O. Box 1680

Fargo, ND 58107

Re: Estate of Selma Kjorvestad

Date of Death - May 15, 1974

Dear Mr. Stafne:

In view of the fact that this decedent passed away prior to July 1, 1975, this matter must be processed through the county court as provided for under Chapter 57-37, North Dakota Century Code, which was in force on the date of death.

To effectively finalize matters regarding this estate, an amended Form 131 must be prepared and submitted to the Nelson Coun-



ty Court.

THIS IS THE FINAL NOTICE OF FILING REQUIREMENT WHICH WILL BE ISSUED FROM THE OFFICE OF THE TAX COMMISSIONER.

Sincerely,

Bonnie Orndorg

Estate Tax Examiner

Phone: 224-3470